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October 13, 1995

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

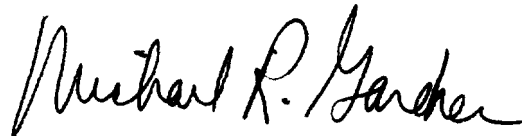
RE: Notice of Proposed Rulemaking
MM Docket No. 93-48

Dear Mr. Caton:

On behalf of NATPE International, enclosed please find an original and four (4) copies of its Comments filed in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael R. Gardner
Counsel for NATPE International

Enclosures

No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policies and Rules Concerning)
Children's Television Programming)

Revision for Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

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COMMENTS OF NATPE INTERNATIONAL

NATPE International ("NATPE"), by its attorneys, hereby files Comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding, wherein the Commission seeks comment on preliminary proposals for effecting certain changes to licensee compliance with the Children's Television Act of 1990 ("CTA" or "Act") and to implement the Act more effectively. See Revision of Programming Policies for Television Stations, Notice of Proposed Rulemaking, 10 FCC Rcd 6308 (1995) ("NPRM"). As discussed below, NATPE believes that quantitative programming requirements for broadcasters are inappropriate, are necessarily encumbered by First Amendment considerations, and could actually serve as a disincentive for broadcasters seeking to maximize their use of programming specifically designed to serve the educational and informational needs of children.

NATPE is a non-profit organization founded in 1962 by U.S. television executives committed to improving the quality of television programming. More than thirty years later, NATPE has grown into the world's premiere global programming organization,

with a diverse industry membership that includes broadcasters, telcos, independent programmers, the major studios, cable operators and syndicators.

Given NATPE's leadership role in the development of programming and software in the United States and throughout the world, NATPE shares the Commission's goal of promoting educational and informational children's television programming. Indeed, NATPE and its Educational Foundation have aggressively addressed public policy issues impacting children, as NATPE, like the Commission, appreciates the positive role that television can play in the development of children.

In this regard, NATPE and its member stations designed a public service campaign aimed at curbing the increased incidents of prejudice in our society. That campaign, specifically designed to attract young viewers, included a series of animated public service spots that aired prominently throughout the country at times when children are most likely to be watching television. In June 1994, NATPE sponsored a teleworkshop with FCC officials and broadcasters that was distributed via satellite to television stations and schools around the country, in which broadcasters discussed how they were voluntarily limiting the use of violent news footage during their early evening news broadcasts in order to reduce the likelihood of exposing young viewers to such programming. Additionally, consistent with NATPE's view of the importance of the children's television issue, NATPE will conduct a Children's Television Workshop on January 23, 1996 at NATPE's Annual Convention in Las Vegas.

NATPE does not support the Commission's proposals in its NPRM to adopt quantitative programming requirements for children, whether in the form of a substantive rule or as a "safe harbor" processing guideline. While NATPE supports the

Commission's continuing efforts at ensuring licensee compliance with the CTA — an Act that has already prompted an increase in the amount of educational and informational programming for children — NATPE believes that efforts at increasing the amount of children's programming must be effectuated through the Commission's current regulatory framework. The Commission has traditionally relied on the judgment and discretion of broadcasters, as public trustees, to offer programming that is consistent with the Commission's rules and best serves the needs of their audiences. In NATPE's view, the Commission's past and appropriate reliance on broadcaster discretion and commitment to their public trustee responsibilities should be continued as it has generally proven to be well placed and legally sound.

Further, as the Commission has explicitly recognized, the marketplace, and not the federal government, is better qualified to judge the quality of children's television programming.¹ Instead of dictating program content by imposing suspect quantitative programming requirements, the Commission should promote self-initiated activities, such as those launched by NATPE, its member stations and the broadcasting and programming industries to increase the effectiveness of children's television as contemplated by the CTA. In this regard, NATPE President Bruce Johansen, in testimony delivered during the Commission's children's television en banc hearing last year, urged the Commission to consider creative alternatives to promoting the development of quality children's programming other than stifling content and quantitative regulations. Mr. Johansen suggested that, among other things, the

¹ See NPRM, para. 21.

Commission consider issuing once-a-year commendations to broadcasters for outstanding efforts in the children's television arena, and convening semi-annual meetings where broadcasters, programmers, producers, educators and public interest groups could come together for ongoing discussions with Commission officials to evaluate the quality of children's programming and broadcaster compliance with the CTA.² A regulatory framework, such as the current one, that encourages this type of robust marketplace collaboration on a cooperative basis by broadcasters, parents, advocacy groups and children themselves would surely help to increase the development of children's educational and informational programming that would be sufficiently entertaining to attract and hold young audiences.

Moreover, any departure from this current regulatory framework to one that mandates quantitative and content standards for children's television would be contrary to the Congress's intent and the Commission's interpretation of the CTA. Had the Congress intended to subject broadcasters to quantitative restrictions when it enacted the CTA, it would have done so. The legislative history of the CTA is clear; Congress "[did] not intend that the FCC interpret [the CTA] as requiring or mandating quantification standards governing the amount or placement of children's educational and informational programming that a broadcast licensee must air . . ."³ The Commission itself explicitly recognized that quantitative guidelines "conflict with

² See Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, MM Docket No. 93-48, En Banc Hearings on Children's Television, Testimony of NATPE President Bruce Johansen, pp. 111-115 (June 28, 1994).

³ See 136 Cong. Rec. S10122 (daily ed. July 19, 1990)(remarks of Sen. Inouye).

Congressional intent not to establish minimum criteria that would limit broadcasters' programming discretion...tend[ing] to make compliance overly rigid, as broadcasters seek to meet the criteria in order to insulate themselves from further review."⁴

Additionally, as FCC Commissioner James H. Quello has accurately stated, quantitative programming requirements "are First Amendment time bombs waiting to explode in a court of law."⁵ While the eventual outcome of any legal challenge to quantitative programming requirements is uncertain, it is predictable that the delay and regulatory uncertainty attendant to judicial review will occur, and as the Commission knows, when delay and legal uncertainty cloud an important issue, the marketplace becomes very tentative. In this case, the programming and broadcasting marketplace is responding to the goals of the CTA and the commercial need for more quality children's programming. That positive momentum would clearly be put at risk from the predictable delay and regulatory uncertainty that will result from judicial appeals of any quantitative regulations that might be adopted by the Commission.

In sum, quantitative programming requirements will neither advance Congress's explicit intent in the CTA nor the Commission's goal in the instant rulemaking. Rather, quantitative measures will run afoul of Congressional intent and well-rooted First Amendment principles; importantly, adoption of quantitative regulations by the FCC

⁴ See Policies and Rules Concerning Children's Television Programming and Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Memorandum Opinion and Order, 6 FCC Rcd 5093, para. 40 (1991).

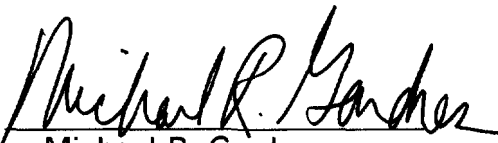
⁵ See NPRM, 10 FCC Rcd 6308 (statement of Commissioner James H. Quello).

could stifle broadcasters' and programmers' creativity and establish a rigid and unnecessary benchmark that could have a chilling effect on the variety and quality of children's programming in the future.

In view of the positive marketplace response to the CTA, the Commission should reject rigid and intrusive quantitative standards and continue to rely on the appropriate discretion and judgment of its licensees to best determine how to serve the needs of the public, including its young viewers. Self-initiated activities on the part of the industry, encouraged by appropriate Commission support, could help to further energize the programming marketplace to provide more children's programming that would effectively attract, entertain and educate young viewers in the United States.

Respectfully submitted,

NATPE International

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